

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

:::

JUDGMENT

Rahim Bux.

vs.

Heeralal.

S.B.CIVIL SECOND APPEAL NO.76/1989
UNDER SECTION 100 CPC AGAINST THE
JUDGMENT AND DECREE DATED 11.4.1989
PASSED BY SHRI BANSHILAL GUPTA,
DISTRICT JUDGE, UDAIPUR IN CIVIL
FIRST APPEAL NO.41/1987.

DATE OF JUDGMENT ::: 15.3.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.G Vaishnav, for the appellant.

Mr.V Makkad & Mr.M Parik for Mr.S Mathur for respondent

- - - - -

BY THE COURT:

Heard learned counsel for the parties.

The appellant/defendant is aggrieved against the
judgment and decree dated 11.4.1989 by which the first
appellate court granted eviction decree against the

respondent/tenant on the ground of sub-letting and parting with possession of the suit property by the tenant.

According to learned counsel for the appellant, the admitted case of the plaintiff himself was that in the premises in dispute, none else than the tenant's son is residing, therefore, there cannot arise subletting of the property by tenant to his son. It is also submitted that the defendant specifically stated that Noor Mohammed is his son and he was residing in the rented premises since the time of tenancy and because of shortage of space, he lived at another place for short period and thereafter, he again came back. It is also submitted that the plaintiff failed to prove any consideration in relation to tenancy between tenant and his son. It is also submitted that even if it is held that originally the defendant's son was not residing with the defendant in the rented premises, even then, if the defendant allowed to live with him, then it is not a case of subletting or parting with possession of the suit property.

Learned counsel for the respondent vehemently submitted that the facts of the case are very peculiar in nature. In fact, the defendant clearly admitted that he was tenant in the suit shop. His case was that since

beginning, his son was living with him whereas in fact, the defendant left the rented premises which is very small premises and started living at a different place. Not only this, that this is the allegation of the plaintiff but even the summon of the Court was also served on the defendant on his new address. The first appellate court considered the documentary evidence – ration card Ex.A/3 and Ex.A/4 as well as voters list Ex.A/7 and observed that in the disputed room, the defendant, his 4-5 sons with their children and family could not have lived at any point of time. Therefore, it is a case of parting with possession by the tenant and handing it over exclusively to one person, may he be his son, but the original tenant has not retained his possession. It is also submitted that the consideration in the case of sub-tenancy cannot be normally proved by the landlord and when the transaction is between father and son – tenant and alleged sublette, then it is virtually impossible to prove consideration. Therefore, even if the ingredients of subletting in strict sense may not be proved, but the case of parting with possession is made out.

while admitting the second appeal on 3.1.1992, this Court framed following substantial questions of law involved in this appeal :-

“(1) whether a tenant can be said to have sublet the premises merely by commanding one of his son to live with him and during his such living the tenant happens to have gone for some time to his other son ?

(2) whether in the facts & circumstances of the case, the appellant Rahimbux parted with the possession to Noor Mohammed ?”

I considered the submissions of learned counsel for the parties and perused the record also.

This fact cannot be disputed that the suit property is a very small residential accommodation and the defendant could not have lived with his entire family including 4-5 sons with their family in one room. The defendant's wife was also alive at the relevant time. The defendant started living at different place and the plaintiff gave complete address where the defendant is living. The oral evidence was also considered by the first appellate court whereas the defendant himself failed to produce his own son to rebut the evidence. Therefore, it was a case of parting with possession by the tenant and handing it over to his own son. It is not a case where the tenant accommodated his own son in the rented premises and that may not have been an act of tenant with penalty of his eviction because of that fact only. The tenant, if,

looses his possession and hand it over to other person and the other person exclusively occupy the premises, then that may amount to parting with possession, if the facts and circumstances warrant to draw such inference. In these circumstances, it cannot be said that the first appellate court has not considered any of the aspect of the matter or has committed error of law in arriving at conclusion that in fact, the defendant left the suit premises and handed it over to his son and the defendant started living in another house. Therefore, it is not a case, as stated above, of accommodating the son in the rented premises by the tenant. Therefore, substantial question of law no.1, in the facts of the case, is decided against the appellant. Since the finding of fact that tenant Rahim Bux left the rented premises and handed it over to Noor Mohammed, has not been vitiated by any lawful reason of misreading of evidence or misreading of document, therefore, substantial question of law no.2 is also decided against the appellant.

Consequently, this appeal is hereby dismissed with no order as to costs.

S.Phophaliya

(PRAKASH TATIA), J.